



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155568

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2014, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on June 05, 2014.

The issue for determination is whether petitioner's cost share obligation was correctly calculated effective January 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Desiree Pollard-Badji
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a participant in the Family Care Program (FCP). She filed this appeal to contest her Family Care cost share because she does not believe that it is fair to have such a large portion of her income be allocated to a cost share.

3. On December 9, 2013 the agency issued a notice of decision to petitioner stating that effective January 1, 2014 her cost share would be \$406.30.
4. Petitioner has monthly gross unearned income in the amount of \$1757.30. Her rent is \$800. In the determination of cost share, petitioner has been credited with a basic needs allowance of \$901 and a special housing amount of \$450. These amounts are not disputed.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

Petitioner falls into the Group B category of Family Care eligibility. Group B FCP members must make a cost share payment. *Id.*, §28.8.3.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH*, §28.5.1. Payment of the cost share is a condition of eligibility. *Id.* The allowable deductions from income are the personal maintenance allowance, a family maintenance allowance where the FCP member is the custodial parent, health insurance premiums, medical/remedial expenses and special exempt income. *MEH*, §§28.8.3.1; 28.8.3.2 and 28.8.3.3. The personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the [Spousal Impoverishment](#) Income Allocation Worksheet ([18.6.4](#)).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See [39.4.2 EBD Deductions and Allowances](#))
2. \$65 and ½ earned income deduction (See [15.7.5 \\$65 and ½ Earned Income Deduction](#)).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility ([CBRF](#)), Residential Care Apartment Complex (RCAC) or an [Adult](#) Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

The special exempt income deduction consists of:

1. Income used for supporting others (15.7.2.1 Support Payments).
2. Court-ordered attorney fees (15.7.2.3 Fees to Guardians or Attorneys).
3. Court-ordered guardian and guardian ad litem fees (15.7.2.3 Fees to Guardians or Attorneys).
4. Expenses associated with establishing and maintaining a guardianship. (15.7.2.3 Fees to Guardians or Attorneys)
5. Expenses associated with a Self-Support Plan (15.7.2.2 Self-Support Plan).
6. Impairment Related Work Expenses (IRWE) (15.7.4 Impairment Related Work Expenses (IRWE))
7. Maintaining a home or apartment (15.7.1 Maintaining Home or Apartment)
8. Costs associated with real property listed for sale (16.2 Assets Availability)

...

MEH, §15.7.2.

I provide this information so that petitioner has an explanation of how the cost share is calculated. She also has [Exhibit 8](#), which shows the budget screen and how her cost share was calculated. As for the imposition of a cost share - the Division of Hearings and Appeals does not make or change law and policy. It can only decide whether or not the parties in cases over which it has authority have followed and/or correctly applied the law and policy. Here I have reviewed the calculations and find no errors.

Petitioner is reminded that if any of the amounts used in the cost share calculation change she should provide the evidence of those changes to the agency. She is also reminded that if she has medical remedial expenses, she will need to keep and provide verification of those expenses to her case manager.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on

equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That the available evidence indicates that Petitioner's cost share has been correctly calculated effective January 1, 2014.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

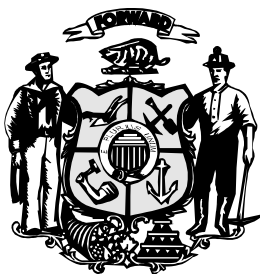
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of June, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion